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November 20, 1980

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INTERAGENCY
Ralph Wong, Chairman
Arizona Board of Pesticide Control
1624 West Adams, Suite 103
Phoenix, Arizona 85007

Re: I80-193 (R80-198)

Dear Chairman Wong:

This is in response to your opinion request of August 25, 1980, in which you asked us to address the following questions:

1. Whether a designated representative of the Director of the Department of Health Services should be permitted to vote on issues that arise at the Board of Pesticide Control official meetings?
2. Whether all of the other members of the Board of Pesticide Control should be permitted to send a designated representative to Board meetings with the power to vote on all Board issues?

A.R.S. § 36-136.C. authorizes the Director of the Department of Health Services (hereinafter "Director") to

deputize, in writing, any qualified officer or employee in the department to do or perform in the director's stead any act the director is by law empowered to do or charged with the responsibility of doing.

A.R.S. § 3-372.B. provides that the Board of Pesticide Control (hereinafter "Board")

shall be composed of the chairman of the commission of agriculture and horticulture, the director of the department of health services and thirteen members to be appointed by the governor . . .
(emphasis added)

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As a member of the Board, the Director is empowered to vote on issues that arise at Board meetings. Because membership on the Board and the privileges and duties, including voting, which implicitly accompany membership are acts which the Director is empowered to do, the Director may, pursuant to A.R.S. § 36-136.C., designate a representative to act in his stead and vote on issues arising at Board meetings.^{1/}

In answer to your second question, whether a duty is delegable under law depends upon whether it is ministerial or discretionary. The general rule is that the former is delegable, while the latter is not, absent specific legislation direction to the contrary. Peck v. Board of Education, Ariz. App. _____, 612 P.2d 1076, 1098 (1980); Bagley v. City of Manhattan Beach, 132 Cal. Rptr. 668, 553 P.2d 1140 (1976); California School Employees Association v. Personnel Commission of P.V.U.S.D., 89 Cal. Rptr. 620, 474 P.2d 436 (1970); Ariz.Att'yGen.Op. No. 180-092; Ariz.Att'yGen.Op. No. 180-070.

The difference between ministerial and discretionary duties has been addressed by the Supreme Court of Arizona in the following manner:

1. Reference is made in your opinion request to the legislative history of H.B. 2036, the bill originally introduced in the 1979 First Regular Session to amend, inter alia, A.R.S. § 3-372. You are correct in stating that H.B. 2036 originally included the following language:

The board shall be composed of . . . the State Chemist or his designated representative, the Director of the Department of Health Services or his designated representative . . . (emphasis added)

It is also true that the "or his designated representative" language was stricken.

However, a review of the minutes of the House Committees on Health and Agriculture, the committees to which the bill was assigned, provides no explanation for the striking of the language in question. We cannot imply, merely from the fact

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An act is ministerial where the law requiring it to be performed, prescribes the time, manner, and occasion of its performance with such certainty that nothing remains for judgment or discretion. Magma Copper Co. v. Arizona State Tax Commission, 67 Ariz. 77, 85, 191 P.2d 169, 174 (1948).

See also State v. Airesearch Mfg. Co., 68 Ariz. 342, 350, 206 P.2d 562, 568 (1949).

Voting on Board issues clearly requires the exercise of judgment or discretion. A board member must base his voting decision on an evaluation of evidence presented to the Board on any given issue. Because voting cannot be considered a ministerial act, and because there is no specific legislative

(continuation of footnote #1)

that that language was deleted, an intention that the Director not be permitted to send a designated representative to Board meetings.

Moreover, the implication of such an intention would create a conflict between A.R.S. §§ 36-136.C. and 3-372.B. It is a general rule of statutory construction that statutes relating to the same subject should be read together and harmonized if possible. State ex rel. Larson v. Farley, 106 Ariz. 119, 122, 471 P.2d 731, 734 (1970); Home Owner's Loan Corporation v. City of Phoenix, 51 Ariz. 455, 461, 77P.2d 818, 820 (1938); 2A Sutherland; Statutes and Statutory Construction § 51.02 (4th ed. Sands 1973). Since the provisions of A.R.S. §§ 36-136.C. and 3-372.B. do not conflict on their faces, we have no reason to place upon them a strained interpretation which would prevent them from being read together harmoniously.

Finally, it should be noted that the amendments to A.R.S. § 3-372 were passed by the legislature as part of S.B. 1333 rather than H.B. 2036. The latter was held in the House Rules Committee and was not voted upon by the 1979 legislature. The minutes of the Senate Committee on Health, Welfare and Aging concerning S.B. 1333 offer no explanation for the deletion of the "or his designated representative" language.

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authority for delegation of discretionary authority by Board members other than the Director, it is our opinion that members of the Board other than the Director may not authorize designated representatives to vote in their stead at Board meetings.

In summary, it is our opinion that the Director of the Department of Health Services may designate a representative to attend meetings of the Board of Pesticide Control and to vote on issues arising therein. However, because there is no specific statutory provision allowing other members to delegate their authority, they may not designate representatives to attend meetings and vote in their behalf.

Sincerely,



BOB CORBIN
Attorney General

BC:JS:ge